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MAJLIS PERBANDARAN SUBANG JAYA v. VISAMAYA SDN BHD & ANOR

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
HAMID SULTAN ABU BACKER JCA
B UMI KALTHUM ABDUL MAJID JCA
[CIVIL APPEAL NO: B-01-127-04-2014]
11 MAY 2015

C ***ADMINISTRATIVE LAW:*** *Judicial review – Certiorari – Application to convert land use category under s. 124(1)(a) and (c) of National Land Code – Application allowed by State Authority – Subsequent application for planning permission rejected by local authority – Appeal against rejection dismissed by Appeal Board – Whether Appeal Board reasonable in dismissal of appeal – Whether there was illegality, procedural impropriety or irrationality warranting judicial review*
D *intervention*

LOCAL GOVERNMENT: *Town planning – Application for planning permission – State Authority allowed conversion of land use category – Subsequent application for planning permission rejected by local authority – Conflict between provisions of NLC and local planning laws – Whether provisions of NLC prevailed – National*
E *Land Code, ss. 108, 124(1)(a) & (c) – Town and Country Planning Act 1976, s. 18*

Taman Perindustrian Subang ('Lot 847') was located within the administrative area of Majlis Perbandaran Subang Jaya ('the appellant'). The appellant was the local planning authority pursuant to s. 22 of the Town and Country Planning Act 1976 ('TCPA') which was empowered to consider
F applications for planning permission within its administrative area. The title document issued under the National Land Code ('the NLC') in respect of Lot 847 showed that it was a freehold title with the express condition that it was for 'Industri Sederhana' within the land use category of 'Perusahaan/ Industri'. Under the Local Plan Majlis Perbandaran Subang Jaya 2020
G ('the Local Plan MPSJ 2020'), Lot 847 was zoned 'Perindustrian' which may be used for 'commercial purposes'. An application was made by the registered proprietor under s. 124(1)(a) and (c) of the NLC to the Land Administrator Petaling, to convert the land use category of Lot 847 from 'Perindustrian' to 'Bangunan' and the express condition from 'Industri
H Sederhana' to 'Perniagaan'. By a letter dated 15 August 2011, the appellant had no objections to change of use to 'Komersial'. On 21 December 2011, the State Authority approved the application for conversion of Lot 847 to 'Building' with the express condition 'Commercial Building' pursuant to s. 124(1)(a) and (c) of the NLC subject to, *inter alia*, compliance with policies
I and guidelines of the State Planning Committee and the Local Planning Authority. This was notified *vide* letters by the Pejabat Daerah dan Tanah

Petaling dated 25 January 2012 and 15 March 2012 to the registered proprietor. On 20 April 2012, an application for planning permission was made by the first respondent, under a power of attorney from the registered proprietor, to construct two blocks of commercial 'service apartment'. By a letter dated 30 May 2012, the appellant notified the first respondent that its application was rejected on the grounds, *inter alia*, that (i) the commercial activity of 'service apartment' was not consistent with the surrounding land usage. On 12 March 2013, the Selangor Appeal Board ('Appeal Board') dismissed the appeal by the first respondent against its application made to the appellant. Subsequently, the first respondent sought and obtained from the High Court an order of *certiorari* to quash the decision of the Appeal Board and an order of *mandamus* to the appeal board to reconsider the first respondent's appeal. The High Court held that the word 'restriction' appearing in s. 108 of the NLC should be construed as a restriction imposed by the local authority or planning authority upon the owner of the land and to the extent that the restriction is inconsistent with the express condition in the register document of title, the restriction shall not have any effect. Hence, the present appeal. The issues that arose for the court's determination *inter alia* was whether s. 108 of the NLC reconciled with s. 18 of the TCPA.

Held (allowing appeal; setting aside order of the High Court with costs) Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) The High Court failed to take into consideration that the NLC was enacted in 1965 while the TCPA was enacted in 1976. Parliament could not be held to be ignorant of the NLC enacted in 1965. Being aware that the NLC was passed in 1965, the approach to the interpretation must be that Parliament intended that the TCPA be read consistent with the NLC and if not possible, the TCPA, as the later legislation prevails. (para 17)

(2) The NLC provided in general terms for land use for agriculture, building, and industry. Conditions in individual titles are too cumbersome for the purpose of planning development. Before the NLC, a large number of land titles have been issued. There were other laws and bye-laws. It is to these that s. 108 of the NLC was directed. Section 108 of the NLC, however, could not apply to laws passed subsequently by Parliament and regulations authorised thereunder. Therefore, the submission that s. 108 of the NLC rendered the TCPA and zoning thereunder inconsistent with the land use under the NLC titles was null and void holds no merit. (paras 18 & 19)

(3) The letter dated 15 March 2012 allowed a change from medium industry to 'commercial building'. The use allowed in the title under the NLC must be read so as to be consistent with the zoned use of the area the land is located in. A commercial building in a local area planned or

zoned for industry must necessarily be a commercial building consistent with serving industry. To accept otherwise would be to flout the TCPA and the Local Plan MPSJ 2020. (para 23)

(4) A commercial service apartment is a commercial building. But land use in a title is another matter from the plan or zoning for industry. Applying the term 'commercial building' in the title to allow commercial building that accorded with the existing industrial zoning is a reasonable rationalisation that the local planning authority is entitled to make to ensure adherence to the planning objectives as approved. The Appeal Board was not unreasonable to have rejected the appeal. A judicial review is to intervene where there is illegality, procedural impropriety or irrationality and possibly proportionality. As there is no illegality as against s. 108 of the NLC, there was no irrationality nor lack of proportionality in the decision of the appellant and the Appeal Board. (paras 24, 25 & 26)

Bahasa Malaysia *Translation Of Headnotes*

Taman Perindustrian Subang ('Lot 847') terletak di dalam kawasan pentadbiran Majlis Perbandaran Subang Jaya ('perayu'). Perayu adalah pihak berkuasa perancangan tempatan menurut s. 22 Akta Perancangan Bandar dan Desa 1976 ('APBD') yang telah diberi kuasa untuk mempertimbangkan permohonan kebenaran merancang di dalam kawasan pentadbirannya. Dokumen hak milik yang dikeluarkan di bawah Kanun Tanah Negara ('KTN') berkenaan dengan Lot 847 menunjukkan bahawa ia adalah hak milik pegangan bebas dengan syarat nyata bahawa ia adalah untuk 'Industri Sederhana' dalam kategori penggunaan tanah 'Perusahaan/Industri'. Di bawah Rancangan Tempatan Majlis Perbandaran Subang Jaya 2020 ('Rancangan Tempatan MPSJ 2020'), Lot 847 telah dizonkan sebagai 'Perindustrian' yang boleh digunakan untuk 'tujuan komersial'. Permohonan telah dibuat oleh pemilik berdaftar di bawah s. 124(1)(a) dan (c) KTN kepada Pentadbir Tanah Petaling, untuk menukar kategori penggunaan tanah Lot 847 daripada 'Perindustrian' kepada 'Bangunan' dan syarat nyata daripada 'Industri Sederhana' kepada 'Perniagaan'. Melalui surat bertarikh 15 Ogos 2011, perayu tiada bantahan untuk menukar penggunaan kepada 'komersial'. Pada 21 Disember 2011, Pihak Berkuasa Negeri telah meluluskan permohonan untuk penukaran Lot 847 kepada 'Bangunan' dengan syarat nyata 'Bangunan Komersial' menurut s. 124 (1)(a) dan (c) KTN tertakluk kepada, antara lain, pematuhan kepada polisi dan garis panduan Jawatankuasa Perancang Negeri dan Pihak Berkuasa Perancang Tempatan. Ini telah dimaklumkan melalui surat oleh Pejabat Daerah dan Tanah Petaling bertarikh 25 Januari 2012 dan 15 Mac 2012 kepada pemilik berdaftar. Pada 20 April 2012, satu permohonan untuk kebenaran merancang telah dibuat oleh responden pertama di bawah surat kuasa wakil daripada pemilik

berdaftar, untuk membina dua blok pangsapuri perkhidmatan komersial. Melalui surat bertarikh 30 Mei 2012, perayu telah memaklumkan kepada responden pertama bahawa permohonannya telah ditolak atas alasan, antara lain, bahawa (i) aktiviti komersial 'service apartment' tidak selaras dengan penggunaan tanah di sekitarnya. Pada 12 Mac 2013, Lembaga Rayuan Selangor ('Lembaga Rayuan') telah menolak rayuan responden pertama terhadap permohonan yang dibuat kepada perayu. Kemudian, responden pertama telah memohon, dan memperoleh daripada Mahkamah Tinggi satu perintah *certiorari* untuk membatalkan keputusan Lembaga Rayuan dan perintah *mandamus* kepada Lembaga Rayuan untuk mempertimbangkan semula rayuan responden pertama. Mahkamah Tinggi telah membuat dapatan bahawa perkataan 'sekatan' yang terkandung dalam s. 108 KTN harus ditafsirkan sebagai sekatan yang dikenakan oleh pihak berkuasa atau perancangan pihak berkuasa tempatan kepada pemilik tanah dan sehingga ke tahap bahawa sekatan tersebut tidak konsisten dengan syarat nyata dalam dokumen hak milik, sekatan tersebut tidak mempunyai sebarang kesan. Oleh itu rayuan ini. Isu-isu yang dibangkitkan untuk pertimbangan mahkamah, antara lain, adalah sama ada s. 108 KTN selaras dengan s. 18 APBD.

Diputuskan (membenarkan rayuan; mengenepikan perintah Mahkamah Tinggi dengan kos)

Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah Tinggi telah gagal untuk mempertimbangkan bahawa KTN telah digubal pada tahun 1965 manakala APBD telah digubal pada tahun 1976. Parlimen tidak boleh diputuskan tiada pengetahuan terhadap KTN yang telah digubal pada tahun 1965. Menyedari bahawa KTN telah diluluskan pada tahun 1965, pendekatan ke arah tafsiran yang harus dibuat adalah bahawa Parlimen berniat bahawa APBD dibaca selaras dengan KTN dan jika tidak mungkin, APBD, sebagai perundangan terkemudian mengatasinya.

(2) KTN memperuntukkan dalam terma umum penggunaan tanah untuk pertanian, bangunan, dan industri. Syarat-syarat dalam hak milik individu terlalu sukar untuk tujuan merancang pembangunan. Sebelum KTN, sebilangan besar hak milik tanah telah dikeluarkan. Terdapat undang-undang lain dan undang-undang kecil. Seksyen 108 KTN adalah untuk tujuan ini. Seksyen 108, walau bagaimanapun, tidak boleh diguna pakai kepada perundangan yang kemudiannya diluluskan oleh Parlimen dan peraturan yang dibenarkan di bawahnya. Oleh itu, hujahan bahawa s. 108 KTN menyebabkan APBD dan zon di bawahnya tidak selaras dengan penggunaan tanah di bawah hak milik KTN adalah batal dan tidak bermerit.

(3) Surat bertarikh 15 Mac 2012 membenarkan pertukaran daripada industri sederhana kepada 'bangunan komersial'. Penggunaan yang dibenarkan dalam hak milik di bawah KTN perlu dibaca supaya selaras dengan zon kegunaan kawasan di mana tanah terletak. Sebuah bangunan komersial di kawasan tempatan dirancang atau dizonkan untuk perindustrian semestinya menjadi bangunan komersial selaras dengan industri yang disediakan. Untuk menerima sebaliknya adalah melanggar peruntukan APBD dan Rancangan Tempatan MPSJ 2020.

(4) Sebuah pangsapuri perkhidmatan komersial adalah bangunan komersial. Tetapi penggunaan tanah dalam hak milik adalah suatu perkara yang lain daripada perancangan atau pengezonan untuk industri. Penggunaan terma 'bangunan komersial' dalam hak milik untuk membenarkan bangunan komersial yang selaras dengan zon perindustrian yang sedia ada adalah rasionalisasi yang munasabah bahawa pihak berkuasa perancangan tempatan berhak memastikan pematuhan kepada objektif perancangan yang diluluskan. Lembaga Rayuan tidak menolak rayuan tersebut secara tidak munasabah. Semakan kehakiman adalah untuk campur tangan di mana adanya ketaksahan undang-undang, ketidakwajaran prosedur atau keadaan tidak rasional dan kemungkinan perkadaran. Oleh kerana tiada ketaksahan undang-undang terhadap s. 108 KTN, tiada keadaan tidak rasional atau kekurangan kekadaran dalam keputusan perayu dan Lembaga Rayuan.

Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Council of Civil Service Unions and Ors v. Minister for the Civil Service [1985] AC 374 HL ***(refd)***

Datin Siti Hajar v. Murugasu [1970] 1 LNS 23 HC ***(refd)***

Teh Bee v. K Maruthamuthu [1977] 1 LNS 134 FC ***(refd)***

Venkateswara Sdn Bhd v. Datuk Bandar Kuala Lumpur [2002] 8 CLJ 997 HC ***(refd)***

Legislation referred to:

National Land Code, ss. 52, 89, 104, 108, 120, 124(1)(a), (c), 125, 134

Town and Country Planning Act 1976, s. 22

For the appellant - Karin Lim Ai Ching (Murgan D Maniam with her); M/s Presgrave & Matthews

For the 1st respondent - Alex Tan Chie Sian (Dennis Goh with him); M/s Wong Kian Kheong

For the 2nd respondent - Unrepresented

[Editor's note: For the High Court judgment, please see Visamaya Sdn Bhd v. Majlis Perbandaran Subang Jaya & Anor [2014] 1 LNS 620 (overruled).]

Reported by Sandra Gabriel

JUDGMENT

Abdul Wahab Patail JCA:

[1] The appellant Majlis Perbandaran Subang Jaya appealed against the decision of the High Court to issue:

(a) an order of *certiorari* to quash the decision dated 12 March 2013 of the Selangor Appeal Board ("the Appeal Board") which dismissed the appeal of the first respondent Visamaya Sdn Bhd against the dismissal on 22 May 2012 of its application made on 30 April 2012 to the appellant for planning permission to construct two blocks of service apartment on Lot 847, Jalan Subang 7, Taman Perindustrian Subang USJ 1, Subang Jaya, Mukim Damansara, Daerah Petaling ("Lot 847"); and

(b) an order of *mandamus* directing the Appeal Board to reconsider the first respondent's appeal against the said decision of the appellant was also issued.

Brief Facts

[2] Lot 847 is located within the administrative area of the appellant. It is the local planning authority that, pursuant to s. 22 of the Town and Country Planning Act 1976 ("TCPA"), is empowered to consider applications for planning permission within its administrative area.

[3] The title document issued under the National Land Code ("the NLC") in respect of Lot 847 shows it is a freehold title with the express condition that it is for "industri sederhana" within the land use category of "perusahaan/industry".

[4] Under the Local Plan Majlis Perbandaran Subang Jaya 2020 ("the Local Plan MPSJ 2020") agreed to by the State Authority and which assent was gazetted in the Government Gazette of the State of Selangor, Gazette No. 1566 on 27 May 2010, Lot 847 was zoned "perindustrian" which may be used for "commercial purposes".

[5] On 8 July 2011, an application was made by the registered proprietor under s. 124(1)(a) and (c) of the NLC to the Land Administrator Petaling, to convert the land use category of Lot 847 from "perindustrian" to "bangunan" and the express condition from "industri sederhana" to "perniagaan". By a letter dated 15 August 2011, the appellant had no objections to change of use to "komersial". On 21 December 2011, the State Authority approved the application for conversion of Lot 847 to "building" with the express condition "commercial building" pursuant to s. 124(1)(a) and (c) of the NLC and subject to, *inter alia*, compliance with policies and guidelines of the state planning committee and the local planning authority. This was notified by letters by the Pejabat Daerah dan Tanah Petaling dated 25 January 2012 and 15 March 2012.

[6] On 20 April 2012, an application for planning permission was made by the first respondent under a power of attorney from the registered proprietor, to construct two blocks of commercial "service apartment" containing:

(a) Block A - 23 storey commercial "service apartment" (319 unit);

(b) Block B - 23 storey commercial "service apartment" (319 unit);

(c) 1 storey shop office (7 unit); and

(d) Facilities.

[7] By a letter dated 30 May 2012, the appellant notified the first respondent that its application was rejected by the appellant at its meeting on 22 May 2012 on the grounds:

(a) the commercial activity of "service apartment" was not consistent with the surrounding land usage;

(b) the commercial activity allowed was commercial activity to support the existing industrial area.

[8] The Appeal Board dismissed an appeal by the first respondent against that decision. The first respondent sought and obtained from the High Court an order of *certiorari* to quash the decision of the Appeal Board and an order of *mandamus* to the Appeal Board to reconsider the first respondent's appeal thereat. The appellant appealed to this court.

Decision

[9] The High Court had adopted the arguments for the first respondent as follows:

(a) Section 89 of the NLC stipulates that every register document of title shall, *inter alia*, be conclusive evidence of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body: Teo Keang Sood and Khaw Lake Tee, *Land Law in Malaysia Cases and Commentary*, 2nd edn, Butterworths Asia; *Teh Bee v. K Maruthamuthu* [1977] 1 LNS 134; [1977] 2 MLJ 7.

(i) Section 52 of the NLC prescribes only three main categories of land use:

(1) agriculture;

(2) building; and

(3) industry.

(b) Section 120 of the NLC provides that an express condition is a condition that is attached to any land that is alienated by the State Authority to a person or body, and s. 104 provides that an express condition runs with the land and binds the registered proprietor of the land. Therefore the express condition "commercial building" on Lot 847 binds the registered proprietor to use as "commercial building".

(c) Section 108 of the NLC provides that where any land affected by any by-law of, or restriction imposed by, any local authority or planning authority become subject by virtue of this Act to any condition which is inconsistent therewith, the condition shall prevail, and the by-law or restriction shall, to the extent of the inconsistency, cease to apply to the land.

(d) Sections 125 and 134 of the NLC the High Court held it is in the interest of a registered proprietor of land to ensure that the land use and express condition imposed on his land is complied with completely since should there be any breach of condition of the land use and express condition, the land shall be liable to be forfeited.

(e) Section 108 provided:

> 108. Conflict with local by-laws, etc.
>
> Where any land affected by any by-law of, or restriction imposed by, any local authority or planning authority becomes subject by virtue of this Act to any condition which is inconsistent therewith, the condition shall prevail, and the by-law or restriction shall, to the extent of the inconsistency, cease to apply to the land.

[10] At para. 27 of its grounds of judgment, the High Court summed up the argument for the appellant as follows:

> 27. MPSJ's argument is premised on the following: (i) the applicant did not raise the issue of s. 108 NLC in the Notice of Appeal; (ii) there is no conflict between the NLC and the TCPA 1976; (iii) there is no conflict between the express condition of "Commercial Building" endorsed on the document of title and the land use under MPSJ Local Plan. Lot 847 is zoned as "Perindustrian" under MPSJ Local Plan and the site may be used for "commercial purposes" subject to conditions specified therein; (iii) s. 18 TCPA 1976 requires any land to be used in conformity with the local plan; (iv) there is a distinction between the concept of "use" of land under the NLC on the one hand and "Use Classes" under the MPSJ Local Plan; and (v) MPSJ is bound by s. 22(4) TCPA 1976.

[11] We appreciate the distaste at the level of the superior courts that "applicant did not raise the issue of s. 108 of the NLC in the Notice of Appeal". Given that every person is deemed to know the law, and ignorance of the law is no defence, the argument that a point of law was not raised

A earlier, without more, holds no merit. See *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 MLJ 393 FC. It is an objection that applies where there are:

(a) disputed facts, because notice must be given to the other party to check and verify it if it so desires, to satisfy itself that the evidence and facts B are genuine and true; and

(b) questions of law but only if it is demonstrated there are facts and evidence necessary to be led to answer the point of law being raised.

[12] Otherwise such argument not only cannot be accepted as a submission, C but also, sounding petulant, has the effect of tainting the other submissions raised to its level. It left the High Court to the consideration of the law on interpretation of statutes and purposive interpretation (paras. 28, 29, 30), conflict between the NLC and any restriction imposed by the local authority or local planning authority (para. 31 and ss. 104 and 108 of the NLC), and D the meaning of the word "restriction", leading the High Court to hold:

> 33. Applying the above principles, the word 'restriction' appearing in s. 108 NLC should be construed as a restriction imposed by the local authority or planning authority upon the owner of the land. And to the extent that the restriction is inconsistent with the express condition in the register document of title, the restriction shall not have any effect. E
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> 34. In the circumstances of this case, can it be said that the MPSJ Local Plan amounts to a "restriction" within the meaning of s. 108 NLC? How does this reconcile with s. 18 TCPA 1976 which provides that no person shall use or permit to be used any land or building otherwise than in conformity with the local plan.

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[13] The High Court then referred to two cases in the High Court. However, *Datin Siti Hajar v. Murugasu* [1970] 1 LNS 23, [1970] 2 MLJ 153 did not concern s. 108 but only the NLC generally, and the complete paragraph reads as follows:

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> Moreover, the purpose of the National Land Code is provided by its long title: "An Act to amend and consolidate the laws relating to land and land tenure, the registration of title to land and of dealings therewith and the collection of revenue therefrom within the States of Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu, and for purposes connected therewith." The H rule of construction is that an amending and consolidating Act implies both addition to, and derogation from, the pre-existing law, but such an Act is a complete Code in itself as regards the subjects it deals with. This appears to be the resulting implication of the views of Lord Herschell in *Bank of England v. Vagliano Brothers* [1891] AC 107 in the Privy Council when considering the Bills of Exchange Act, 1882. In *Despatie v. Tremblay*

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[1921] 1 AC 702, 709 also a Privy Council case, Lord Moulton cited with approval the language used by Lord Herschell in the case cited above, and said in relation to the interpretation of a statute:

> From thenceforth the law is determined by what is found in the code and not by a consideration of the conclusions which ought to have been drawn from the materials from which it has been framed.
>
> ...

[14] Despite the NLC is a complete Code in itself as regards the subjects it deals with, it can be amended and the interpretation is based upon what is found in the Code as amended.

[15] In *Venkateswara Sdn Bhd v. Datuk Bandar Kuala Lumpur* [2002] 8 CLJ 997, the High Court was concerned with whether the local authority had exceeded its powers and acted unreasonably and did not directly make the proposition that where there is a conflict between the provisions of the NLC and local planning laws, the provisions of the NLC shall prevail.

[16] The High Court in the instant case was correct in appreciating that the decisions of MPSJ and the Appeal Board were predicated upon the finding that the proposed development was incompatible with the MPSJ Local Plan. It concluded:

> 39. Suffice it to say at this juncture that there is an obvious conflict between the express condition in the register document of title and the Local Plan. Insofar as any of the conditions under the MPAJ Local Plan are inconsistent with the express condition "Commercial Building" for Lot 847, those conditions in question are restrictions within the meaning of s. 108 NLC.
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> ...
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> 41. Accordingly, it follows that the decision of the Appeal Board is tainted with illegality and is accordingly null and void.

[17] In so doing, the High Court failed to take into consideration that the NLC was enacted in 1965 while the TCPA was enacted in 1976. Parliament cannot be held to be ignorant of the NLC enacted in 1965. On the contrary, Parliament being aware of the NLC it passed in 1965, the approach to interpretation must be:

(a) Parliament intended that the TCPA be read consistent with the NLC; and if not possible

(b) the TCPA, as the later legislation prevails.

[18] The NLC provided in general terms for land use for agriculture, building, and industry. Conditions in individual titles are too cumbersome a means for the purpose of planning development. Before the NLC, a large

number of land titles had been issued. There were other laws and bye-laws. It is to these that s. 108 was directed. Section 108, however, cannot apply to laws passed subsequently by Parliament and regulations authorised thereunder.

[19] We, therefore, hold the submission that s. 108 renders the TCPA and zoning thereunder inconsistent with land use under the NLC titles null and void holds no merit.

[20] The TCPA provided specifically for the proper control and regulation of town and country planning in Peninsular Malaysia and for purposes connected therewith or ancillary thereto. While the NLC addresses land use in individual titles, the TCPA addresses planning by land use zones. By the time the TCPA was promulgated, large numbers of land titles had been issued, with condition of use as often as not that differs from the zoning. For planned development to succeed, obviously if the condition of use in the title is in conflict with the zoning, the condition is almost routinely amended to the use authorised by the zoning.

[21] We note that the Pejabat Daerah dan Tanah Petaling had by its letter of 25 January 2012 notified that "syarat-syarat terperinci dan notis 7G akan dikemukakan kemudian setelah mendapat nilaian tanah daripada Jabatan Penilaian Dan Perkhidmatan Harta Negeri Selangor". By its letter of 15 March 2012, the Pejabat Daerah dan Tanah Petaling set out the terms, *inter alia*, as follows:

> 2. Sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan Negeri Selangor 39/2011 bertarikh 21 Disember 2011 menimbang dan meluluskan permohonan tuan ke atas hakmilik GM 88 Lot 847, Mukim Damansara, Daerah Petaling seperti syarat-syarat dan bayaran berikut:
>
> (a) Bangunan perniagaan yang dibina tertakluk kepada keperluan piawaian Pihak Berkuasa Perancang;
>
> (b) Kategori tanah, syarat nyata, premium tambahan dan cukai tahunan seperti berikut: ...;
>
> (c) Pemilik tanah dikehendaki menyediakan pelan tatatur yang diluluskan oleh Pihak Berkuasa Perancang dengan mematuhi dasar dan Garis Panduan Perancangan yang diluluskan oleh Jawatankuasa Perancang Negeri;
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> (d) Sekiranya dipecah sempadan, pemilik tanah dikehendaki menyerahbalik tanah-tanah bagi kegunaan awam di bawah Seksyen 195 Kanun Tanah Negara untuk diwartakan di bawah Seksyen 62, Kanun Tanah Negara;
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> (e) Majlis Perbandaran Subang Jaya tidak dibenarkan menandatangani pelan bangunan dan pelan kerja tanah selagi hal-hal tanah belum diselesaikan;

(f) Pemilik tanah dikehendaki mematuhi kehendak-kehendak Jabatan Teknikal yang berkaitan;

(g) Pemilik tanah disyaratkan mendirikan di atas tanah sebuah bangunan bagi maksud perniagaan dalam masa dua (2) tahun dari tarikh kelulusan permohonan ini;

(h) Perlanggaran kepada syarat tersebut, maka tanah hendaklah menjadi tertanggung untuk perlucuthakan kepada Pihak Berkuasa Negeri dan Pentadbir Tanah hendaklah menjalankan kuasa penguatkuasaan pelucuthakan itu selaras dengan peruntukan Seksyen 129 Kanun Tanah Negara;

(i) ...

[22] Quite clearly while a change of use was allowed, it was expected that the first respondent complies with the Local Plan MPSJ 2020 and requirements of the planning authority.

[23] The conditions by the Pejabat Daerah dan Tanah Petaling reflect the experience that a condition of use in the title for industry allows buildings for industry, but in such a case the emphasis must necessarily be industry. The letter dated 15 March 2012 allowed a change from medium industry to "commercial building". There are many types of commercial buildings, some consistent with and others not consistent with the zoning of the area the land is located in. The use allowed in the title under the NLC must be read so as to be consistent with the zoned use of the area the land is located in. A commercial building in a local area planned or zoned for industry must necessarily be a commercial building consistent with serving industry. To accept otherwise would be to flout the TCPA and the Local Plan MPSJ 2020.

[24] We would accept that a commercial service apartment is a commercial building. But land use in a title is quite another matter from the plan or zoning for industry. Applying the term "commercial building" in the title to allow commercial building that accords with the existing industrial zoning is a reasonable rationalisation that the local planning authority is entitled to make to ensure adherence to the planning objectives as approved, and the Appeal Board was not unreasonable to have rejected the appeal.

[25] The application in this case was made under the supervisory jurisdiction of judicial review. Time and again the courts have referred to *Council of Civil Service Unions and Ors v. Minister for the Civil Service* [1985] AC 374 HL that judicial review is not to interfere but to intervene where there is illegality, procedural impropriety or irrationality and possibly proportionality.

A **[26]** Procedural impropriety and proportionality did not arise in this case. As we have set out above, there is no illegality as against s. 108 of the NLC. We find no irrationality nor lack of proportionality in the decision of the appellant and the Appeal Board. In the circumstances, there was no reason to intervene.

B **[27]** Accordingly, we had allowed the appeal, set aside the order of the High Court, fixed costs in the sum of RM20,000 here and below and ordered the deposit be refunded.

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